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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/809,115

03/25/2004

Michael A. Pouchak

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HONEYWELL INTERNATIONAL INC.  
101 COLUMBIA ROAD  
P O BOX 2245  
MORRISTOWN, NJ 07962-2245

EXAMINER

BOLES, DEREK

ART UNIT

PAPER NUMBER

3749

MAIL DATE

DELIVERY MODE

06/29/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/809,115

Applicant(s)

POUCHAK ET AL.

Examiner

Derek S. Boles

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☒ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Detailed Action***

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-4, 6-12, 15, 18-22 and 24-26 are rejected under 35 U.S.C. 102(a) as being anticipated by Pouchak (6,647,302). See col. 13, line 30 to col. 14, line 47 and col. 15, line 61 to col. 16, line 2. Regarding claim 4, see col. 13, line 41. Regarding claims 6, 7 and 11, see **300**. Regarding claim 25, see col. 14, lines 21-34.

Claim 17 is rejected under 35 U.S.C. 102(b) as being anticipated by Shprecher et al. (5,042,431). See col. 4, line 53 to col. 5, line 2.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim(s) 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pouchak '302 in view of Pouchak (6,536,678). Pouchak '302 discloses all of the limitations of the claim(s) except for equalizing the time in which the stages are active. Pouchak '678 discloses the presence of equalizing the time in which the stages are active. See claim 17. Hence, one skilled

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in the art would find it obvious to modify the system of Pouchak '302 to include the equalizing the time in which the stages are active of Pouchak '678 for the purpose of energy conservation.

Regarding claims 13, 14, and 23, Pouchak '302 discloses all of the limitations of the claims except for disabling a sub-method to activate/deactivate stages for various time periods. However, since the applicant has failed to establish any criticality or synergistic results which are derived from the recited configurations, these limitations are considered a matter of obvious design choice. Thus, the applicant's design configurations would have been an obvious improvement to one of ordinary skill in the art with regard to the apparatus disclosed in Pouchak '302.

### ***Response to Arguments***

Applicant's arguments filed 5/2/06 have been fully considered but they are not persuasive. In response to applicant's argument that modulating various stages to operate at less than 100% is not shown in Pouchak, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Considering the broad nature of the independent claims, the above cited passage of Pouchak and more specifically col. 15, line 61 to col. 16, line 2, completely suffices in rendering these independent claims as obvious to one of ordinary skill in the art of boiler control. Further, the boiler operation by a computer is in Pouchak '302.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The provided references are representative of the state of the art that is applicable to

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the applicant's invention. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derek S. Boles at (571) 272-4872 or supervisory patent examiner Steve McAllister at (571) 272-4828.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D.S.B.

  
**DEREK S. BOLES**  
**PRIMARY EXAMINER**  
**GROUP 3700**

6/26/07